CV 15 2687

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

BRODIE, J.

JASON SIMMONS	§	
Plaintiff,	§	
	§	
vs.	§	**JURY TRIAL DEMANDED**
	§	
Attorney, Ray Jackson,	§	
Defendant.	§	

U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK

2015 MAY -7 PM 3:11

FILED CLERK

ORIGINAL COMPLAINT AND JURY DEMAND BY PLAINTIFF JASON SIMMONS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Jason Simmons, hereinafter called "Plaintiff," complaining of and about Attorney, Ray Jackson, hereinafter called "defendant," and for the cause of action shows unto the Court the following:

I. PARTIES AND SERVICE

Plaintiff, Jason Simmons, is a citizen of the United States of America and of the State of New York. He resides in Queens County, New York and, he may be served at 417 Myrtle Ave, BOX #2, Brooklyn, NY 11205.

Defendant, Attorney Ray Jackson, may be served at his place of business 3838 Oak Lawn, Suite 1350 Dallas, Texas 75219.

II. JURISDICTION

The Complaint arises under 28 U.S. Code § 1332 (a), as the plaintiff does not share a state of citizenship with the defendant and, the amount in controversy exceeds $75,000.

III. VENUE

The Eastern District of New York is the proper venue for this lawsuit because the plaintiff resided in Queens County, New York at the time of the conduct taken by the defendant. Plaintiff still resides in Queens County, New York.

IV. NATURE OF ACTION/APPLICABLE LAW

The events complained of arise out of the defendant's conduct acting as the plaintiff's lawyer before the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF

TEXAS DALLAS DIVISION in CIVIL ACTION NO. 3:14-CV-2958-B initiated on January 4, 2011, therefore, the Texas common law will apply to the defendant's conduct. The statute of limitations for breach of fiduciary duty in Texas is four years (Tex. Civ. Prac. & Rem. Code Ann. § 16.004(a) (5) (Vernon 2002). The events complained of occurred in 2012, before the disposition of Federal Docket Number 3:11-CV-0017-B on April 26, 2012.

V. FACTS

Attorney, Ray Jackson, ("defendant/counsel"), was hired by the plaintiff in May of 2010, to file a lawsuit against Dallas Methodist Hospital, ("hospital"), following plaintiff's employment suspension/termination.

Plaintiff provided his counsel with a litany of evidence to prove what he believed was misconduct by the hospital including but not limited to: an audio recording of the final hearing held between himself and the hospital, ("Exhibit A"), and, a copy of the 2009 complaint of harassment plaintiff made to Dr. Manuel Rivera, MD, the hospital's designated institutional official, ("DIO"), for the Accreditation Counsel for Graduate Medical Education ("ACGME"), ("Exhibit B").

Plaintiff also asked the defendant several legal questions during conversations that took place in counsel's office, over the phone and, via email. For example, on November 11, 2010, the plaintiff asked the defendant about potential breach of contract claims, ("Exhibit C").

Defendant told the plaintiff that he would answer the plaintiff's questions at a future meeting and, to be patient because the legal process takes a long time.

The defendant filed a singular complaint of Racial Discrimination against the hospital, on the plaintiff's behalf, on January 4, 2011, CIVIL ACTION NO. 3:14-CV-2958-B. The judge granted the hospital's motion for summary judgment on April 26, 2012, due to a lack of the plaintiff's evidence, ("Exhibit D).

The plaintiff resided in New York at the time of the final judgment. Plaintiff initiated conversation with the defendant after learning of the summary judgment decision online. Plaintiff asked his attorney why he did not inform plaintiff of the decision and, what was the status of the case.

The defendant did not respond to the plaintiff's direct questions. Defendant did, however, inform the plaintiff that there was no way to fight the summary judgment by appeal or rehearing and, that any other claims against the defendant were now thrown out due to the summary judgment decision. Plaintiff was unaware that the defendant did not use a single piece of his evidence to pursue any legal theory against the hospital.

VI. BACKGOUND

Plaintiff was an internal medicine resident at Dallas Methodist Hospital from July 2007 to May 2010. Of note, plaintiff was a licensed physician by the TMB in 2010, dependent on the hospital giving him staff privileges to earn a living. Plaintiff was entitled to due process during the hospital's proceedings to terminate his employment (*Guerrero v. Burlington County Mem. Hospital*, 70 N.J. 344 (1976).

Dr. Manuel Rivera, MD was employed by the hospital as the designated institutional official for the ACGME during the plaintiff's residency.

Leigh Hunter, MD was employed by the hospital as director of the internal medicine residency program. Drs. Raymond Munoz, MD and, David Rosenstein, MD were employed by the hospital as internal medicine faculty in 2009 and 2010.

Plaintiff wrote a letter to the DIO in November of 2009 complaining of harassment he received from Drs. Hunter, Munoz, and, Rosenstein, ("Exhibit B").

The harassment plaintiff received from Dr. Leigh Hunter, MD did not stop following his complaint to the DIO, including Dr. Hunter's refusal to grant plaintiff two weeks of vacation.

On May 6, 2010, the plaintiff made a formal complaint of harassment to the ACGME regarding several issues including: the treatment he received from Dr. Leigh Hunter, MD, throughout his entire residency, her refusal to grant him vacation, and the DIO's neglect in resolving the conflict, ("Exhibit E").

The ACGME contacted the DIO in regard to the complaint made by plaintiff in May 2010, (Exhibit F").

The DIO met with the plaintiff on May 19, 2010, and, asked the plaintiff to submit to mental health screening. The DIO stated the reasons for the testing was because plaintiff wrote unauthorized orders and failed to return Dr. Hunter's pages.

The plaintiff asked to see the orders he wrote but, the DIO refused to disclose them.

The DIO provided the plaintiff a suspension letter on May 20, 2010. The letter contained false representations claiming plaintiff wrote unauthorized orders and, failed to return Dr. Hunter's pages.

The plaintiff met with the Dallas Methodist Hospital Executive Committee of Graduate Medical Education, ("GMEC"), on May 20, 2010. The plaintiff made an audio recording of the meeting, ("Exhibit A").

The GMEC did not include a peer of the plaintiff's on the committee as required by the ACGME, did not disclose evidence it used to justify its decision, did not review the medical records to verify the unauthorized order allegation and, did not allow plaintiff to defend himself against his accuser, Dr. Leigh Hunter, MD.

The meeting was held two weeks after plaintiff made a complaint to the ACGME.

Plaintiff was suspended by the defendant following the GMEC meeting and, ultimately terminated from his employment.

VII. BREACH OF FIDUCIARY DUTY

Breach of fiduciary duty includes: the existence of a fiduciary relationship between the plaintiff and defendant; the defendant breached this duty and; the defendant's breach proximately caused injury to the plaintiff (*Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App. - Dallas 2006)). "Proximate cause produces particular, foreseeable consequences without the intervention of any independent or unforeseeable force (*Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994))."

Count I: US District Court- Evidence Omission

Duty: Defendant owed the plaintiff a duty to reasonably represent him in Docket 3:11-CV-0017-B. "A lawyer in Texas is held to the standard of care which would be exercised by a reasonably prudent attorney. The jury must evaluate his conduct based on the information the attorney has at the time of the alleged act of negligence (*Cosgrove v. Grimes*, 774 S.W.2d 662, 665 (Tex. 1989))."

Breach: In response to the hospital's motion for summary judgment made in January 2012, the reasonably prudent attorney would have been aware of the plaintiff's need to provide evidence of such a quality that a jury could reasonably base a verdict in his favor. Defendant was aware of and, had in his possession, more than a mere scintilla of such evidence to defeat the motion, ("Exhibits A, B"), but, he purposely withheld it from the court. Counsel did not admit the plaintiff's evidence throughout the duration of Docket Number 3:11-CV-0017-B. The audio recording, proved the hospital's blatant due process and, ACGME violations including violation of ACGME policies: I.B.3.a) and, IV.C1.b), ("Exhibit G"). Of note, the plaintiff's complaint

made to the DIO has the defendant's law firm insignia at the top indicating that he had it in his possession in October 2010, ("Exhibit B"). Counsel breached his duty to act as a reasonably prudent attorney in not attempting to defeat the summary judgment with the evidence he had.

Causation: Because of defendant's omission, the judge granted the hospital's motion for summary judgment in April 2012, basing her decision on the lack of plaintiff's evidence, ("Exhibit D). Without counsel's intervention, it was foreseeable the judge would find the plaintiff made baseless assertions without the support of evidence. Defendant did not pursue the plaintiff's claims in a "prudent" fashion.

Damages: The plaintiff was unable to secure his rights against the hospital because of defendant's breach of fiduciary duty rather than the legitimacy of the case. The judge assumed the plaintiff had no evidence to support his claim. The plaintiff is entitled to relief.

VIII. DAMAGES

Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:

a. Actual damages;
b. All reasonable and necessary Attorney's fees incurred by or on behalf of the Plaintiff;
c. All reasonable and necessary costs incurred in pursuit of this suit;
d. Damage to reputation;
e. Emotional pain;
f. Inconvenience;
g. Loss of enjoyment of life;
h. Mental anguish in the past;
i. Mental anguish in the future;
j. Loss of earnings in the past;
k. Loss of earning capacity which will, in all probability, be incurred in the future and;
l. Prejudgment and post-judgment interest at the highest rate allowed by law.

IX. EXEMPLARY DAMAGES

Plaintiff would further show the acts and omissions of the Defendant, Ray Jackson, complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish the Defendant, Ray Jackson, for engaging in unlawful business practices and to deter such actions and/or omissions in the future, Plaintiff also requests recovery from the Defendant for exemplary damages at the highest rate allowed by law.

Plaintiff is seeking damages in the amount of: $2,000,000.00

The amount sought in the original action 3:14-CV-2858-B filed on 1/4/11

5/7/15

X. PRAYER & REQUEST FOR TRIAL BY JURY

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Jason Simmons, respectfully prays the Defendant, Ray Jackson, be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages, together with interest as allowed by law; costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity. Plaintiff hereby requests trial by jury.

I, the undersigned swear under oath that the stated facts and referenced "Attachments" in the Plaintiff's Original Petition are true and correct, are admissible, are within my personal knowledge, and I am competent to testify,

ABRAHAM PATELSKY
Notary Public, State of New York
No. 01PA6146583
Qualified in Kings County
My Commission Expires May 22, 2018

PLAINTIFF

SIGNED under oath before me on 5/7/2015

NOTARY PUBLIC

XI. CERTIFICATE OF CONFERENCE

I certify that I have conferred with Attorney Raymond Jackson, about the merits of this Complaint and Raymond Jackson is aware of it.

Plaintiff-Jason Simmons

Conference as follows:

Via email to: **rayjay1911@yahoo.com**

Ray Jackson

Texas State Bar:

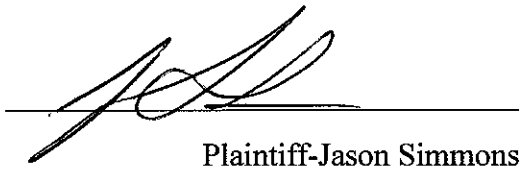
Ray Jackson
The Jackson Law Firm
3838 Oak Lawn, Suite 1350
Dallas, Texas 75219
214-651-6250
214-651-6244 facsimile
rjackson@jacksonfirm.net

XII. CERTIFICATE OF SERVICE

On this 7th day of May, 2015, I hereby certify that a true and correct copy of the foregoing Complaint and has been served on the following individuals at the location in the manner indicated below:

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO:

Ray Jackson
The Jackson Law Firm
3838 Oak Lawn, Suite 1350
Dallas, Texas 75219
214-651-6250
214-651-6244 facsimile
rjackson@jacksonfirm.net



Plaintiff-Jason Simmons

417 Myrtle Ave

PO BOX #2

Brooklyn, NY 11205

PLAINTIFF HEREBY REQUESTS TRIAL BY JURY

EXHIBIT A

Audio recording made by plaintiff, Jason Simmons, MD on May 20, 2010.

Members of the GMEC heard on the recording are listed as follows:

Dr. Stephen Patrick, MD

Barbara Turner, Administrator

Bill Smith, Administrator

Dr. Stephen Hines, MD

Dr. Manuel Rivera, MD

Dr. Leigh Hunter, MD

Dr. Ernest Dunn, MD

I, the undersigned swear that "Exhibit A" is a copy of the original recording made May 20, 2010. The contents are true and correct, are admissible, are within my personal knowledge, and I am competent to testify,

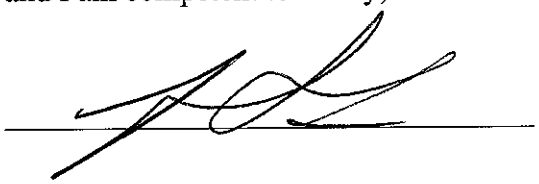


EXHIBIT A - Transcript

recorded. We don't want it recorded.

DOCTOR SIMMONS: If everything's out -- if everything's out in the open, I don't see why it can't be recorded.

MALE #2: I don't want it recorded. That's not the routine that this (inaudible). We don't record anything else. So we don't want it recorded today.

MALE: That's the letter that was in here yesterday, that's the letter of suspension, that's just in case you didn't get it. I would just want to make sure that you have that. We just introduced it to me when I was here and I'm just not sure that we don't have the recorder on because we don't want this being recorded. This is mainly just to discuss some issues that the community has and they want an answer from you. So, let me just start, Doctor Patrick, do you want to -- let's just go around and we'll get the (inaudible) from the residency, that would be good.

(Parties introduce themselves)

MR. RIVERA: And I'm Paul Rivera, I'm the DIO and (inaudible).

(Inaudible): (Inaudible).

MR. SPENCER: Bill Spencer, attorney of record (inaudible).

INAUDIBLE VOICE: (inaudible) co-defendant.

MR. JOHNSON: Bert Johnson, (inaudible).

MALE: So this is the Executive Committee for GME and this meeting was called by the Executive Committee for GME. This is your refusal to discuss any issues (inaudible) order DIO. The ECGME (inaudible) in order to recommend certain (inaudible) and a possibility of conducting the case with the (inaudible) which is coming up, Tuesday, May 25th.

Let me just start by saying that what we want is just to state what issues are pending and we want to hear what you we have say about those issues. And then after that, the committee will discuss and then we take action to it, recommendations or a possible discussion by ECGME.

The issues that we need to discuss are -- the questions I have that are pending are the failures to answer pages from -- of the quote, unquote, (inaudible) institutional (inaudible) as far as the program director. So, (inaudible), failures to respond to calls or pages -- pages as they have asked you. We want to know what other issues of the guidebook (inaudible) rights to it.

DOCTOR SIMMONS: I have no issues. I returned all pages I received.

MALE: So, you return all the pages?

DOCTOR SIMMONS: Yes, I did. So, for you -- I mean, especially you're taking the word of someone who has recently internally investigated and they're just taking their

word for it that I didn't return pages. There's records throughout the hospital of me writing notes. I've been here the whole entire time, I've been living up to my responsibilities, so.

MALE: (inaudible) hear from you. We're here not to discuss it -- discuss any information from my investigation or (inaudible).

DOCTOR SIMMONS: Why can we not discuss any issues from your investigation? Because it relates -- it relates to all of this?

MALE: The Executive Committee calls a meeting with an agenda which is the agenda of the Executive Committee, not the agenda of a person that we called to the Executive Committee meeting. So, if you would please answer what those issues are, what your point is?

DOCTOR SIMMONS: Oh, there are no issues. I returned -- I returned all the pages I received. I saved my pages and I will provide to you pages with her signature and number at the end and a page goes directly to fax. She's paged me the fax numbers.

DOCTOR HENNER: (inaudible) multiple times.

DOCTOR SIMMONS: And I -- I have other pages that are saved and other numbers that are non-existent where no one answers the phone. This is -- we're on -- onto what, the twenty (inaudible) rotation. I spend the first half of

rotation with a colleague and there were no issues. There's been no issues for two years, ten months and one week of my being here. I go on rotation with the person he recently investigated and she says this is what happened and you just sent this to me. It's not going to hold up, sir. You know it's not.

MALE: Did you answer the pages? Your statement to that is that you answered all your pages?

DOCTOR SIMMONS: Absolutely. I wouldn't have made it to two weeks left before I graduated if I don't answer my pages.

MALE: In your --

DOCTOR SIMMONS: I think the issue would have -- the argument addressed to find out my history of not answering my pages.

MALE: (inaudible) service on --

DOCTOR SIMMONS: Did Doctor Shake report this problem?

MALE: (inaudible).

DOCTOR SIMMONS: Did Doctor Shake report this problem?

DOCTOR HENNER: Yes.

MALE: There is a 5-11 report that you did not see a consult and that you reported that Doctor Shake had released you from the service and that you turned the pager

off. We have reports back that -- we have reports back that Doctor Shake had not released you from the service and that --

DOCTOR SIMMONS: Not from the service, he released me from the day -- for the day.

DOCTOR HENNER: He did not. He did not, sir.

DOCTOR SIMMONS: Well, I mean, it's -- he said/she said, it's just what this is going to turn into on top --

MALE: Doctor Simmons?

DOCTOR SIMMONS: Yes, sir.

MALE: You say -- you stated that he released you from that -- that (inaudible) Novak? The afternoon of May 17th, you saw a consult that you're referring. There's a report also that you did not discuss this with your supervising attending and you wrote file recommendations and words on that case. Do you remember that?

DOCTOR SIMMONS: Yes, I do and the last line, we'll discuss case with Doctor Hanart (phonetic). I didn't write, follow recommendations. I didn't write orders. I didn't change anything -- it's right there in the chart.

DOCTOR HENNER: You wrote recommendations on the consult. You (inaudible) letter from me consult. I would have found out the next day, is when you told (inaudible).

DOCTOR SIMMONS: Again, sir, I -- you've seen my CV, you've seen how decorated I am. You've seen where I'm

headed. We get to this two weeks left and someone who you just had to investigate is saying something against me.

MALE: (inaudible).

DOCTOR SIMMONS: That's fantastic but I'm just -- I'm just trying to establish credibility here.

MALE: On the 17th, there is a report that you were (inaudible) labor and delivery about 4:30 in the afternoon and that you did not answer back for an I.D. consult. Do you remember that? Do you remember --

DOCTOR SIMMONS: Yeah, I was in the process of filling out the consult and I discussed with the -- who is the OB person, I don't know the name (inaudible). I discussed with one of your residents and I'm sure that they can tell you I was down there in IC talking to him about the case. It was a lady who got here, she presented at 20.5 weeks. She's suggestive -- she wanted everything done to try and salvage her pregnancy. She had a fever. I started to write the consult. She went home with (inaudible) antibiotics. She came back, that failed. She delivered a dead fetus. Diagnosis is (inaudible). Doctor Henner recommended (inaudible). I was in the process of writing that note and that's when Doctor Henner called me and told me you're off my service. So, that's the explanation for that one.

DOCTOR HENNER: That's the (inaudible).

MALE: Do you remember --

DOCTOR HENNER: (inaudible).

MALE: Do you remember the name of the OB resident?

DOCTOR SIMMONS: I could (inaudible). I don't know her name.

MALE: A female or a male?

DOCTOR SIMMONS: She's a female. There are actually two of them there. I could point them out, I don't know their names.

MALE: Okay.

DOCTOR HENNER: But the point is, you did not answer the day before when I saw her. You saw the patient the next morning when Amy notified --

DOCTOR SIMMONS: Again, Doctor Henner, you never paged me. You'll notice you never page me.

MALE: Well, there's another item here --

DOCTOR SIMMONS: Go back and look in your cameras at the hospital where I'm at. I was sitting right in the hospital until 5 o'clock on these stated days. Go back and review the records. I was here in the hospital waiting to work.

MALE: There is another issue here. Some days back, probably a week before this, when you were supposed to be in the clinic. The report says that you went to the clinic, you left the clinic and they called you back. You

asked -- they were asked -- they asked you where you were. You told them that you were in a meeting with me.

DOCTOR SIMMONS: I did not say that.

MALE: And -- well, that's what I have stated, that's what you stated --

DOCTOR SIMMONS: All you have is he said/she said, sir, so I mean --

MALE: (inaudible).

DOCTOR SIMMONS: -- if that's what you're going to continue to read off, that's fantastic. I never said that.

MALE: You didn't say that?

DOCTOR SIMMONS: I never said I was in a meeting with you?

MALE: You stated you were in a meeting with me.

DOCTOR SIMMONS: No.

MALE: Okay. Okay. The last one we have is just that yesterday after our meeting, (inaudible). I'm sorry, after our meeting across the street, you saw Doctor Pantry somewhere in the hospital. And you told me that you told him that you had been drug tested and that you were going to compare that to --

DOCTOR SIMMONS: I told you yesterday that I was drug tested?

MALE: (inaudible) said yes.

MALE #2: Oh, it was Tuesday. Not yesterday, it

was on Tuesday.

DOCTOR SIMMONS: Yesterday about 11:30 in the morning.

MALE: (inaudible). You told me that you had been drug tested at your (inaudible) and that you were scheduled for a drug --

DOCTOR SIMMONS: My goodness.

MALE: -- (inaudible).

DOCTOR SIMMONS: This is going to turn into he said/she said, that's all you have, sir.

MALE: You said that you were happy to do the test, both tests, because then you would be able to compare the result (inaudible) to the one that you did. (inaudible).

DOCTOR SIMMONS: Doctor (inaudible), is that consistent with what I said to you twenty minutes before, no, I will not give you a drug test because I'm scheduled to do a drug test on Monday. I don't want you guys taking a sample from me because I don't want you guys supposedly to continue with -- similar to what you're doing right now to say something's in my urine. So you can compare it to JPS's. I told you I would meet with you on Monday and I'll give you a sample on Monday so you can compare the two. I never told you I already tested, that's twenty minutes later.

MALE: (inaudible), you said you had been drug tested. You had the results to compare them.

DOCTOR SIMMONS: No, that's -- okay, that's what this is.

MALE: Those are the items that I have that the Executive Committee wanted me to ask. As far as, is there anything else that the Executive Committee wants to (inaudible) talk to him about, items that I am missing from what I wrote down that I previously (inaudible)? Can you think of anything else?

DOCTOR HENNER: (inaudible).

MALE: No? (inaudible) you said (inaudible) said that the Executive Committee will go ahead and discuss these items and your answers to this, these questions that they had. And you continue to be suspended. We will discuss this and the Executive Committee will come up with some action plan and I will communicate with you back as soon as we have that decision (inaudible).

DOCTOR SIMMONS: Can I ask you a few questions?

MALE: No (inaudible). Okay?

DOCTOR SIMMONS: I didn't say -- I'm not saying that --

MALE: (inaudible) and you said no. Why would he do that? Why would he make that up? I just need an answer. He's lying. Why is he lying and said you said something that didn't have (inaudible).

DOCTOR SIMMONS: I don't know why he did that,

for some reason --

MALE: Because he's not here.

DOCTOR SIMMONS: Sir, the same reason -- the same reason why I don't know why Doctor Henner is stating that she has paged me when she knows she hasn't.

MALE: So I'll (inaudible) two of them are lying. It's kind of interesting, don't you think?

DOCTOR SIMMONS: That's very interesting, yeah.

MALE: I guess you would have to come up with a reason for it, though.

DOCTOR SIMMONS: Yeah, I would.

MALE: Well, okay, it is.

DOCTOR SIMMONS: Can you explain to me for three months, he's not going to respond to me that the -- the complaints that I have, the proof?

MALE: I asked a very specific question about a very specific incident.

DOCTOR SIMMONS: To protect the house is my answer, that's the answer.

MALE: (inaudible).

DOCTOR SIMMONS: To protect Doctor Henner, to protect Doctor Rivera. I mean, you're not going to -- she's not going sit here -- he's not going to sit here --

MALE: Protect (inaudible).

DOCTOR SIMMONS: -- and corroborate a story for

me that proves her guilt, I mean, that's not going to happen.

MALE: (inaudible) I think these stories is an irrelevant event. This has nothing to do with anything else on the table except he said something, you said that he's lying. Now, why is he lying?

DOCTOR SIMMONS: I have given you my answer.

MALE: No, you gave me no answer. There's no answer.

DOCTOR SIMMONS: Right, I think it makes great sense, my answer.

MALE: Well, I explained to you the process that we're going to take and I think that we're -- the Executive Committee will discuss it and then we'll --

DOCTOR SIMMONS: So what are the actual reasons why I'm on suspension now? Could you state them for me?

MALE: (inaudible).

DOCTOR SIMMONS: Okay. Can I -- can I have a copy of the findings that you had from your investigation that you announced to everyone forty-eight hours ago?

MALE: (inaudible).

DOCTOR SIMMONS: Why not?

MALE: Because I'm stating to you no. That's not the process.

DOCTOR SIMMONS: Because why?

MALE: That's not the process.

DOCTOR SIMMONS: Doctor Dunn, do you think that that's a fair answer? We conduct -- we conducted an internal investigation --

MALE: (inaudible).

DOCTOR SIMMONS: -- of Internal Medicine. He has several emails from him saying that I will get back to you in two weeks. I will publish my results. These are public knowledge. So why at this point can I not have a copy of what he wrote on me?

MALE: (Inaudible) hospital -- the hospital has set policies which we have to follow. (inaudible) policy we have to follow.

DOCTOR SIMMONS: Okay. Fantastic. Can I have someone escort me up to the Legal Office because I know people are afraid that I'm going to do something. Can you have a policeman here take me up to the Legal Office?

MALE: The Legal Office?

DOCTOR SIMMONS: Yes, sir.

MALE: (inaudible)?

DOCTOR SIMMONS: No but I can -- don't I have the right to make one?

MALE: You sure do. Okay.

(End of Conversation)

* * * * * * * * *

C E R T I F I C A T E

This is to certify that I have typed the above record from an audio file(s) produced from an electronic sound recording system in the State of New York and that to my best knowledge and belief the above record as typed by me is a true and accurate record of the audio file(s).

John Valente

Mechanical Secretary, Inc.
Molly's Prof. Typing Service

108-16 72nd Avenue
Forest Hills, NY 11375

June 19, 2014

EXHIBIT B

2009 Harassment

You have copies

I hope the email that Dr. Hunter received stating I laughed at the patient while the hospital committee tried to resolve the situation includes a few details. For example, I had the full blessing of my attending to discharge the patient without narcotics and imaging as evidenced by the conversation I had with him over speaker phone so those interested could hear. The patient became so inflamed after I reviewed the chart with her that showed EMS reports, nursing reports, ER doctor's orders, initial H&P all reflected a chief complaint of chest pain. She also tried to insist that I was not her doctor and hadn't seen me during rounds that morning

IN POSSESSION OF RAT JACKSO

I did tell the patient that she could be escorted out by the police and did not apologize for doing so. This was only after I explained to her over the phone from home that the reason she came to the hospital was evaluated. She was aware of discharge planning per our morning discussion with the team and if she does indeed have low back pain she can have it addressed as an outpatient. When she did not like my response she proceeded to tell me what I needed to do for her as a doctor. I explained again our reason for discharge, the fact that I could have her escorted out but would prefer to talk to her face-to face. When I arrived at the hospital, reviewed the chart with her the situation escalated.

not inclu in his email sent 8/12/13

I am unaware of any avenue in this hospital for residents to evaluate the professionalism, let alone defend themselves from these committees who have the right to negatively impact our track record. Yet everyone gets to scrutinize us. I am going to dare suggest that this email was written: 1.Based on false information of actual events 2. In effort to smear my reputation.

The medical students that I work with have collectively given their opinion of me as a physician in honoring me with the Humanism and Excellence in Teaching Award.

If you survey my patients I think you would get a consistent opinion about my level of care as is reflected in my record of evaluations held by Dr. Hunter. I have also received the Methodist Hospital's Tell Us Who's Great Award via patient nomination.

I am unaware of a long list of morbid and or mortal outcomes in treating my patients since I have been here.

When taking all these points into consideration one has to ask, "Where is the disconnect?"

Is Dr. Simmons being judged by Dr. Hunter and hospital committees subjectively, arbitrarily? Are the recent email and propaganda campaign by the program director efforts resulting from subjective feelings?

I refuse to take part in the Dr. Hunter Propaganda Machine. Please feel free to tell her that is the primary reason I did not want to be her chief. Maybe this will put an end to her sending her foot soldiers to extract information from me. I refuse to work along side some members of this faculty, particularly the home-grown ones, who pass as educators. I refuse to help these individuals carry out campaigns where *disfavored* residents are

EXHIBIT B

Remarks to Harassment 11/4/09

written 11/04 - my response to Resident letter by Dr. Hunter

Dr. Rivera,

I am writing in response to the meeting held by Dr. Hunter on Wednesday, October 28 2009. During this meeting she discussed an incident occurring between a patient and resident on 4 North earlier that month. She assumed the discussion was anonymous. Despite her assumption, the residents are very aware of the faculty's opinion of me and their tireless effort to inflate and broadcast any of my mistakes. As recently as September Dr. Munoz, as my attending, openly discussed in front of my team and whomever else in earshot the insignificant details he and Dr. Rosenstein found in my charts of discharged patients. He requested that I explain the discrepancies before we started rounds. This was done on more than one occasion at nursing stations.

As she reviewed the case of a 30yo woman admitted to 23hour observation for chest pain rule out, her discussion was littered with false statements. The things she stated:

1. Patient had chronic history of low back pain
2. Patient was discharged late in evening on the weekend with no where to go
3. Patient was unfunded
4. Resident's lack of compassion kept them from considering above before activating discharge
5. Resident laughed at patient as discharge planning was explained to patient

(If she attempts to lie to you and suggest she did not have these discussion points please remind her she addressed 20-25 resident-physicians, not sheep or children, that day)

To begin, patient received MRI on 10/16/09 of her cervical and thoracic spine (not lumbar). The indication for these studies was arm numbness, left shoulder pain, and cervical radiculopathy. All scans were clinically insignificant.

Second, patient was discharged on 10/14/09 which was a Wednesday. She was aware of the discharge by rounds that morning as discussed with her by the primary team. Discharge orders were signed and dated at 11:10 am.

Third, the patient was not unfunded. She is employed by a national bank and has a major health insurance provider. She lives at home.

At 4 pm on the date of discharge when the patient demands IV narcotics and imaging for her low back pain, I don't believe my refusal to do so reflects a lack of compassion. To suggest that I gave suboptimal medical care to this patient is malicious. To give my current and future colleagues, future treatment partners, future referral base the idea that I don't care about patients is even worse. I am aware that in a professional setting such as this, terms like *slander* and *defamation* apply.

In regard to the fifth point, I will attempt to tell my side of the story. I am aware that in this hospital when whatever non-physician committee is involved the resident's side is rarely heard or considered but I will try.

EXHIBIT B

2009 Harrassment

objectified while those in her "cabinet" receive pardons for equal and worse mistakes. *Disfavored* residents are given different "tracks" to complete to graduate. I don't believe control-by-fear tactics best apply to a residency program where adults are supposed to be educated.

I am aware that I can be a polarizing person. I had to accept this before setting foot in this hospital. I do not look for people to like me because often time their tendencies sway them the other way. I do not know if it is possible for me to care less about what this faculty or hospital committees think of me. I don't believe that is why I am here. I do take offense to attacks on my professional character and for these I will defend myself.

It is upsetting that personal attacks have now resulted from the events occurring at the end of last year. It is amazing how I have become the bad guy for REACTING to a situation. Why aren't the individuals who created the situation the "bad guy?"

It seems as though I fight the temptation each day to meet with you before my exit interview. I have several theories on the "state of things" here at Methodist and suggestions for change. I do not believe that if I shared with you all of the goings on of this internal medicine program, particularly the FULL story of my interactions with her and her faculty, you would be impressed. In fact, I think you would be disgusted. Her trying to pull off stunts like this gives me no reason to fight that temptation any longer.

Sincerely,

Jason Simmons

EXHIBIT C

Re: Jason Simmons- MORE ?s

4 messages

Jason Simmons <jsimmsmd@gmail.com> Thu, Nov 11, 2010 at 4:07 AM
To: ray jackson <rayjay1911@yahoo.com>
Cc: ccienfuegos@jacksonfirm.net

Please see the document attached. I cut and paste a few definitions to help explain my questions.
Thanks

-jason

Breach of contract1.doc
37K

Jason Simmons <jsimmsmd@gmail.com> Mon, Nov 15, 2010 at 4:35 PM
To: ray jackson <rayjay1911@yahoo.com>
Cc: Cristal Cienfuegos <ccienfuegos@jacksonfirm.net>

-see attachment

Here are the names that I left out from the last email. I think this is my final question. :)

-jason

Amit Pate1.doc
33K

EXHIBIT D

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

JASON SIMMONS § § Plaintiff, § § v. § CIVIL ACTION NO. 3:11-CV-0017-B § METHODIST HOSPITALS OF DALLAS, § § Defendant. §

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment (doc. 12), filed January 27, 2012. In the Motion, Defendant argues that Plaintiff has failed to present a prima facie case of discrimination, and further that he has failed to rebut Defendant's claims that he was fired for legitimate, non-pretextual reasons. For the reasons stated below, Defendant's Motion is hereby GRANTED.

I.

BACKGROUND

This is an employment discrimination case that arises from Plaintiff's service as a resident physician. Beginning in July 2007, Plaintiff Jason Simmons served as a resident in Defendant Methodist Hospitals of Dallas' ("Methodist") Internal Medicine Residency Program. Def.'s Mot. for Sum. J. ("Def.'s Mot.") 4. The Internal Medicine Program (the "Program") is a three year program that admits nine residents each year. Id. at 5. The Program requires its residents to complete a certain number of elective and mandatory rotations during a residency. Id. These rotations are scheduled

by two Chief Residents and a Program Director. Id.

As a resident, Simmons agreed to comply with a number of policies and guidelines pertaining to his conduct. Id. at 4. For example, Simmons was required to sign a Resident Physician Agreement for each of his three years of training at Methodist. Id. On June 7, 2009, Simmons signed the Agreement for the 2009-10 training year. Id. He also agreed to abide by the terms of the Employee

Handbook as set forth by the Graduate Medical Institution and Program manuals, as well as the Methodist Hospitals of Dallas Internal Medicine Residency Program Policies and Guidelines. Id. Simmons received a copy of both of these manuals. App. to Def.'s Mot. 23-24.

During his residency, Simmons' direct supervisor was Dr. Leigh Hunter, the Program Director of the Internal Medicine Residency Program. Def.'s Mot. 4. Dr. Hunter reported to Dr. Manuel Rivera, the Assistant Vice President for Graduate Medical Education at Methodist. Id. Methodist's residency programs are governed by the Accreditation Council for Graduate Medical Education ("ACGME"), an independent accrediting organization that evaluates residency programs in the United States. Id. The Graduate Medical Education Committee ("GMEC") is the top Methodist committee that runs all graduate medical education at Methodist and includes approximately twenty members, including two elected residents from each program. Id. at 5.

Simmons alleges that in spring of 2010, he began to have conflicts with other doctors in part due to miscommunication and also due to a failure of Dr. Hunter and Dr. Rivera to accommodate his requests. Compl. 2-3. On March 22, 2010, Simmons requested that some of his vacation time, originally scheduled for June 2010, be rescheduled to May. Def.'s Mot. 15. Dr. Hunter responded that Simmons would be unable to take off that requested time because doing so would mean that he would violate Methodist's vacation policy. Id. On May 14, Simmons met with Dr. Hunter and Dr.

Rivera to discuss which dates he might be able to take a vacation. Id. When he attempted to bring up other topics, Dr. Rivera left the meeting. Compl. 3. Simmons also alleges that he was falsely accused of failing to attend his rounds at the hospital as scheduled when he was actually attending meetings with Dr. Rivera. Id. On May 17, Simmons was informed that Dr. Hunter wanted to meet with him, but Simmons refused to meet with her alone and requested that Dr. Rivera attend the meeting. Id. Then, on May 19, Simmons was called to a meeting with Dr. Rivera, who questioned him about having failed to attend his rounds or to respond to Dr. Hunter's pages. Id. Thereafter, Simmons was asked to take a urine test, which he refused. Id. at 3. Consequently, Dr. Rivera formally suspended Simmons. Id.

One day later, on May 20, 2010, Simmons met with the Executive Committee of the GMEC ("Executive Committee") concerning the conflicts that had arisen. Def.'s Mot. 22. Simmons denied

any issues or concerns that the Executive Committee raised. Id. After the meeting was over, the Executive Committee unanimously decided that the suspension should remain intact and that the recommendation should be made to the GMEC to terminate Simmons' employment. Id. On May 25, the GMEC met to consider the recommendation, and it decided that Simmons should not be permitted to graduate from the Program. Id. at 23. Simmons then appealed the decision to the President and Chief Executive Officer of Methodist Health System of Dallas, Dr. Stephen Mansfield. Id. Dr. Mansfield met with Simmons and reviewed the applicable documentation before deciding to uphold the decision. Id.

Simmons alleges that, beginning in 2010, Methodist began to discriminate in several different ways. First, he alleges that Methodist refused to allow him to work a rotation in Rheumatology. Compl. 2. Second, Simmons alleges that Methodist would not permit him to alter his vacation days

to the point where he was unable to take any vacation. Id. Third, he alleges that Methodist's program directors failed to keep an accurate record of Simmons' conference attendance. Id. Fourth, he alleges that Dr. Rivera incorrectly stated that Simmons had signed a remediation agreement, which he claims that he never signed. Id. And fifth and finally, Simmons alleges that he was unlawfully suspended from the program and eventually terminated. Id. at 4.

Simmons filed this lawsuit on January 4, 2011, claiming that Methodist discriminated against him on the basis of race, in violation of 42 U.S.C. § 2000e and 42 U.S.C. § 1981. Simmons alleges claims of disparate treatment as well as disparate impact. Id. at 4-5. On January 27, 2012, Methodist filed a Motion for Summary Judgment (doc. 12). In the Motion, Methodist argues that Simmons failed to state a prima facie case of disparate treatment, and in the alternative, that Simmons' allegations of disparate treatment are unfounded because it had legitimate and non-discriminatory reasons to terminate his employment. Furthermore, Methodist argues that Simmons has failed to offer any evidence of disparate impact, and has in fact failed to establish a prima facie case of disparate impact under 42 U.S.C. § 2000e-2(k). On March 2, 2012, Simmons filed a Response that relied heavily on his deposition testimony in reiterating that he had been discriminated against. The 1 Motion now being ripe, the Court will address the merits of Methodist's claims below.

Simmons' Response additionally argues that he was subjected to a hostile work environment1 because of his race. Resp. 9-11. This claim was not properly pleaded, and Simmons failed to seek leave from this Court to amend his Complaint to add a hostile work environment claim. If a party fails to amend properly as a matter of course, it "may amend its pleading only with the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). Given that Simmons did not obtain Methodist's consent, it must obtain leave from the Court. Simmons has not articulated why he failed to amend his pleading properly, or why doing so in his Response to Defendant's Motion for Summary Judgment would not cause undue prejudice to Methodist. Furthermore, the Court finds that this amendment would be futile. See Matter of Southmark Corp., 88 F.3d 311, 314-15 (5th Cir. 1996). Accordingly, the Court denies Simmons the right to add this claim, and therefore his argument that he was subject to a hostile work environment is hereby STRICKEN.

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II.

LEGAL STANDARDS

The purpose of summary judgment is "to enable a party who believes there is no genuine dispute as to a separate fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues." Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990). Accordingly, Federal Rule of Civil Procedure 56(a) provides that summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." The substantive law governing a matter determines which facts are material to a case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The summary judgment movant bears the burden of proving that no genuine issue of material fact exists. Latimer v. Smithkline & French Labs, 919 F.2d 301, 303 (5th Cir. 1990). However, if the non-movant ultimately bears the burden of proof at trial, the summary judgment movant need not support its motion with evidence negating the non-movant's case. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rather, the summary judgment movant may satisfy its burden by pointing to the mere absence of evidence supporting the non-movant's case. Id. When the movant bears the burden of proving an affirmative defense at trial, "it must establish beyond dispute all of the defense's essential elements." Bank of La. v. Aetna U.S. Healthcare Inc., 468 F.3d 237, 241 (5th Cir. 2006) (citing Martin v. Alamo Cmty. Coll. Dist., 35 F.3d 409, 412 (5th Cir. 2003)).

Once the summary judgment movant has met this burden, the non-movant must "go beyond

the pleadings and designate specific facts showing that there is a genuine issue for trial." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)(per curiam)(citing Celotex, 477 U.S. at 325).

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Factual controversies regarding the existence of a genuine issue for trial must be resolved in favor of the non-movant. Little, 37 F.3d at 1075. Nevertheless, a non-movant may not simply rely on the Court to sift through the record to find a fact issue, but must instead point to specific evidence in the record and articulate precisely how that evidence supports the challenged claim. Ragas v. Tenn. Gas Pipeline Co., 136 F.3d 455, 458 (5th Cir. 1998). Moreover, the evidence the non-movant does provide must raise more than "some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). This evidence must be such that a jury could reasonably base a verdict in the non-movant's favor. Anderson, 477 U.S. at 248. If the non movant is unable to make such a showing, the court must grant summary judgment. Little, 37 F.3d at 1075.

III.

ANALYSIS

A. Disparate Treatment

Simmons alleges that he was the victim of disparate treatment on the basis of his race in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)(1) (2006). Title VII provides that "[i]t shall be an unlawful employment practice for an employer—(1) to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a)(1). A plaintiff can "prove a claim of intentional discrimination . . . either by direct or circumstantial evidence." McCoy v. City of Shreveport, 492 F.3d 551, 556 (5th Cir. 2007). When the plaintiff presents a case that relies exclusively on circumstantial evidence, the Court will apply the burden-shifting framework as set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802

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(1973). McCoy, 492 F.3d at 556.

Under the McDonnell Douglas framework, the plaintiff has the in initial burden to come forward with evidence establishing a prima facie case of discrimination. Reeves v. Sanderson Plumbing

Prods., Inc., 530 U.S. 133, 142 (2000). To make out a prima facie case, the plaintiff must show that he or she "(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group." McCoy, 492 F.3d at 556–57. "If the plaintiff makes a prima facie showing, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory . . . reason for its employment action." Id. at 557. "The employer's burden is only one of production, not persuasion, and involves no credibility assessment." Id. Finally, "[i]f the employer meets its burden of production, the plaintiff then bears the ultimate burden of proving that the employer's proffered reason is not true but instead is a pretext for the real discriminatory . . . purpose." Id. To carry this burden, the employee must demonstrate that each stated reason articulated by the employer was merely a pretext for discrimination. Id.

i. Adverse Employment Action

Simmons contends that Methodist discriminated against him in several different respects. The alleged discriminatory acts include the following: (1) Methodist refused to allow Simmons to work a rotation in Rheumatology; (2) Methodist would not permit him to alter his vacation days to the point where he was unable to take any vacation; (3) Methodist's program directors failed to keep an accurate record of Simmons' conference attendance; (4) Dr. Rivera incorrectly stated that Simmons had signed a remediation agreement, which Simmons alleges that he never signed; and (5)

Simmons unlawfully suspended from the program and eventually terminated. Id. at 4.

The Court must determine whether these allegations constitute adverse actions that amount to a prima facie case of discrimination under Title VII. The Fifth Circuit has held that adverse actions under Title VII claims include "ultimate employment decisions such as hiring, granting leave, discharging, promoting, and compensating." Pegram v. Honeywell, Inc., 361 F.3d 272, 282 (5th Cir. 2004) (emphasis omitted) (citation omitted). Other actions – including disciplinary filings, reprimands, and poor performance reviews – do not constitute adverse employment actions, even as they might affect the plaintiff's future employment. Roberson v. Game Stop/Babbage's, 152 F. App'x. 356, 360 (5th Cir. 2005).

Simmons' Complaint does not make clear which precise actions constitute unlawful discrimination. However, several of his factual allegations are not adverse employment actions. Claims that Methodist did not calculate his attendance correctly or that it incorrectly believed he signed a remediation agreement are not adverse employment actions. They may be examples of differential treatment, but they are not actionable under the Fifth Circuit's analysis of Title VII. Furthermore, the fact that Simmons did not perform a Rheumatology rotation is not an "ultimate employment decision" because it did not affect his status within the Program. See McCoy, 492 F.3d at 559. Nevertheless, the Court will consider Methodist's resistance to permitting Simmons to take vacation days, as well as his eventual firing, as adverse employment actions. Therefore, the Court 2 finds that Simmons has carried his burden to show that he experienced an adverse employment

Simmons provides no legal support for the theory that limiting available vacation days may be2 an adverse employment action, but for purposes of this Order, the Court will assume without deciding that it is. His eventual firing is, of course, an adverse employment action. See Pegram, 361 F.3d at 282.

action.

ii. Preferential Treatment

To establish the fourth element of a prima facie case for discrimination, Simmons must show that Methodist gave preferential treatment to similarly situated employees outside the protected class. Until the employee produces evidence that similarly situated employees were treated differently, then there is no inference of discrimination for the employer to rebut. See Anthony v. Donahoe, No. 11-30644, 2012 WL 470193, at *3 (5th Cir. Feb. 13, 2012); see also Lee v. Kan. City S. Ry. Co., 574 F.3d 253, 259-60 (5th Cir. 2009) ("The question whether [the plaintiff] presented a prima facie case of racial discrimination turns here on whether either or both of the white engineers identified by [the plaintiff] as comparators were similarly situated to him.").3

Simmons, in both his Complaint and his Response, has offered no facts to suggest differential treatment on the basis of race. Simmons addresses this only by pointing to statements from his from his own Appendix, which includes an affidavit that states plainly that "other non-African Americans were allowed to take their vacation time" and that other residents who made similar mistakes were permitted to graduate. App. to Pl.'s Resp. 22. Apart from Simmons' own testimony, then, within his

Nonetheless, as with other forms of intentional discrimination, providing evidence of "similarly3 situated employees" or that plaintiff was "replaced by an individual outside the protected group" are not the only methods by which a plaintiff may discharge his burden of establishing a prima facie case of intentional discrimination. See Abdu-Brisson v. Delta Airlines, 239 F.3d 456, 467-68 (2d Cir. 2001) ("[A] showing of disparate treatment, while a common and especially effective method of establishing the inference of discriminatory intent necessary to complete the prima facie case, is only one way to discharge that burden."). Simmons may also establish the fourth element of his prima facie case by showing that he was otherwise discharged because of his race. See Lawson v. S. Components, Inc., 410 F. App'x. 833, 835 (5th Cir. 2011) (holding that the fourth element of plaintiff's prima facie case may be satisfied by showing [he] was "otherwise discharged because of [his] race") (citing Bryan v. McKinsey & Co., Inc., 375 F.3d 358, 360 (5th Cir. 2004)). Simmons presents nothing to indicate he is relying upon any theory of liability other than that he was treated differently than similarly situated individuals.

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affidavit and deposition, there is no comparative evidence that would lead to an inference that Methodist discriminated against Simmons or treated similarly situated plaintiffs more favorably. Accordingly, the Court finds that Simmons has not established a prima facie case of racial discrimination because he has not demonstrated that other employees outside his protected class were treated differently than he was.

iii. Defendant's Legitimate, Non-Discriminatory Reasons

Assuming, arguendo, that Simmons were able to establish a prima facie case of discrimination, he would not prevail because Methodist has offered a litany of examples of Simmons' misconduct, which Simmons has failed entirely to rebut. Methodist indicates, for example, that Simmons' performance in a mandatory, required exam dropped from the 47 percentile in his second year to th the 14 percentile in his third year. Def.'s Mot. 11. Pursuant to Methodist policy, all residents scoring th below the 30 percentile are placed on a remediation plan. Id. In Simmons' year, four residents th scored below the 30 percentile, and all were subject to the remediation plan, yet Simmons refused th to sign the plan, and later claimed that he believed he may not be subject to it. Def.'s Mot. 12; App. to Def.'s Mot. 34-35. Thus, there is no evidence that Methodist treated Simmons differently from similarly situated residents, or strayed from its policy in placing Simmons on the remediation plan. Second, Methodist has offered a non-discriminatory explanation for Simmons' inability to work a Rheumatology rotation. Methodist contends that in March 2010, Simmons wrote to Dr. Hunter and stated that he wanted to work his Rheumatology rotation in April, yet was scheduled to work a rotation in Nephrology that month. Def.'s Mot. 13. Dr. Hunter responded that she had

requested information from the program coordinator and attached a copy of his schedule indicating that he was not scheduled to do it in April. Id. Despite this, Dr. Hunter contacted Parkland Hospital

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("Parkland") to see if it would permit Simmons to complete his Rheumatology rotation there. Id.; App. to Def.'s Mot. 91. Because Parkland already had one resident scheduled to perform a Rheumatology rotation in April, it could not accommodate another resident. Id. Nevertheless, Dr. Hunter contacted that resident, who willingly gave up her rotation at Parkland so that Simmons could work there. Id. However, Dr. Hunter then contacted Dr. Carol Croft, the Program Director of Internal Medicine at Parkland, who refused to allow Simmons to perform the rotation because he had failed tho attend his previously scheduled rotation at Parkland. Id. at 13-14; App. to Def.'s Mot. 91. Finally, Dr. Hunter informed Simmons in an email on March 26, 2010, that he could work a Rheumatology rotation at Methodist during April, but Simmons declined. Def.'s Mot. 14; App. to Def.'s Mot. 112. Though Methodist requires its residents to complete a Rheumtaology rotation in order to graduate, it granted Simmons an exception and waived the requirement. Def.'s Mot. 15; App to Def.'s Mot. 114.

Third, Methodist contends that it applied uniform vacation policies to Simmons' requests for vacation days. Pursuant to the Program's Policy and Guidelines, residents do not receive credit for a rotation unless they are present for at least three weeks. Def.'s Mot. 15; App. to Def.'s Mot. 60. On March 23, 2010, Simmons requested a second week of vacation in May, which would have meant that he may not have been present for at least three weeks of his May rotation. Simmons then asked 4 for an exception to this rule. Def.'s Mot. 15; App. to Def.'s Mot. 114. On April 6, 2010, Dr. Hunter notified Simmons that the requirement would not be waived, but in an email notified him that she was "willing to work to work with [him] on the vacation to try to get something figured out for this

Simmons was scheduled for night float from April 28, 2010, to May 4, 2010, which meant that4 he would not have attended his rotation for those days. Def.'s Mot. 15.

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month." Def.'s Mot. 15; App. to Def.'s Mot 114-15. The parties continued to correspond regarding potential vacation dates, until Simmons sent Dr. Hunter an email on May 13 that stated that she was "in a state of denial" regarding the situation. Def.'s Mot. 15; App. to Def.'s Mot. 86. The record

indicates, then, that Methodist applied its vacation policy as written and Simmons has failed to offer any evidence that it was applied in a discriminatory manner.

Finally, Methodist has offered several reasons to explain its decision to suspend and terminate Simmons. In December 2009, a supervising physician reviewed Simmons' performance and noted that he exhibited an unprofessional attitude in his elective Ambulatory rotation that he labeled "worrisome." Def.'s Mot. 18; App. to Def.'s Mot. 148. Simmons was also noted to have a "tendency to want to give patients what they want, even when such is no in patient's best medical interest." App. to Def.'s Mot. 148. In spring 2010, a number of physicians and other residents noted Simmons' continued poor performance and behavior. Def.'s Mot. 18-19. Simmons also frequently failed to respond to urgent pages or emails from his superiors. Def.'s Mot. 20. On May 14, 2010, Dr. Rivera and Dr. Hunter met with Simmons to discuss his performance and behavior, but Simmons became combative by yelling at Dr. Hunter and accused her of being unfair about his vacation schedule. Def.'s Mot 20; App. to Def.'s Mot. 130. At that point, Dr. Rivera terminated the meeting. Id. Later, on May 19, 2010, Simmons met with Dr. Rivera and refused to submit to a drug test, in violation of the Methodist Health System Human Resource Policy. Def.'s Mot 22; App. to Def.'s Mot. 175. Under the this policy, refusal to submit to a drug test results in automatic termination. Id. It was at that point that Dr. Rivera suspended Simmons, and that both GMEC and its Executive Committee voted not to permit Simmons to graduate from the Program. Def.'s Mot. 22-23.

In his Response, Simmons fails to deal substantively with these explanations. Rather, he relies

entirely on his own testimony that he was discriminated against because other residents were treated more favorably. Such assertions, unsupported by evidence, do not rebut evidence put forth by the employer that its reasons are legitimate and nondiscriminatory. See Grimes v. Tex. Dept. of Mental Health & Retardation, 102 F.3d 137, 139-40 (5th Cir. 1996) ("[U]nsubstantiated assertions are not competent summary judgment evidence."); Forsyth v. Barr, 19 F.3d 1527, 1533 (5th Cir. 1994) ("'Summary judgment, to be sure, may be appropriate, even in cases where elusive concepts such as motive or intent are at issue . . . if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation.'") (quoting Krim v. BancTexas Grp., Inc., 989 F.2d 1435, 1449 (5th Cir. 1993)). Where an employee fails to offer any evidence apart from his

subjective belief that he was discriminated against, the employer fails to raise an issue of fact. Id. Accordingly, Simmons has both failed to state a prima facie case of disparate treatment and to rebut Methodist's legitimate, non-discriminatory reasons for both denying him vacation time and for eventually terminating him. Therefore, Methodist's Motion as to Simmons' claim of disparate treatment under Title VII is hereby GRANTED.

B. Disparate Impact

To establish a prima facie case of disparate impact, the plaintiff must show that a "facially neutral employment" standard or policy operates "more harshly on one group than another." Carpenter v. Steven F. Austin State Univ., 706 F.2d 608, 621 (5th Cir. 1983). To carry this burden, the employee must establish that a specific practice or set of practices results in a significant disparity between groups. Johnson v. Uncle Ben's, Inc., 965 F.2d 1363, 1367 (5th Cir. 1992). Therefore, to state a prima facie case of disparate impact, a plaintiff must isolate and identify employment practices that are allegedly responsible for statistical disparities. Wards Cove Packing, Inc. v. Atonio, 490 U.S. 642,

656 (1989), superseded by statute on other grounds, 42 U.S.C. § 2000e–2(k).

Simmons has failed to identify any practice or procedure that has a disparate impact on a protected class. The Court cannot recognize any substantive claim for disparate impact in either his pleadings or his Response. Accordingly, Methodist's Motion with regard to Simmons' claim of disparate impact is hereby GRANTED.

C. Section 1981

"Claims brought pursuant to Title VII and § 1981 are 'governed by the same evidentiary framework,' such that the analyses under both statutes are substantively the same." Jackson v. Watkins, 619 F.3d 463, 466 (5th Cir.2010) (quoting Pegram, 361 F.3d at 281 n.7). Because the Court determined that Simmons' claim fails under Title VII, his § 1981 claims are likewise dismissed. Accordingly, Methodist's Motion as to Simmons' claim brought under § 1981 is hereby GRANTED.

IV.

CONCLUSION

The Court finds that Plaintiff has failed to plead a prima facie case of discrimination under Title VII of the Civil Rights Act or § 1981. Furthermore, Plaintiff has failed to respond to

Defendant's legitimate and nondiscriminatory reasons that support the adverse actions taken against him. Consequently, Plaintiff cannot show that there is a genuine issue of material fact, and therefore cannot survive summary judgment. For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby GRANTED.

SO ORDERED.

SIGNED April 26, 2012

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_____ JANE J. BOYLE UNITED STATES DISTRICT JUDGE

EXHIBIT-E 2

TRANSMISSION VERIFICATION REPORT

Retaliation
sent 5/6/10

TIME : 05/06/2010 15:45
NAME : NEUROLOGY
FAX : 2149475180
TEL : 2149475192
SER.# : 000K7N230991

DATE,TIME	05/06 15:45
FAX NO./NAME	3127555048
DURATION	00:00:00
PAGE(S)	00
RESULT	BUSY
MODE	STANDARD

BUSY: BUSY/NO RESPONSE

214-948-[illegible] • [illegible]-948-[illegible] • Fax 214-948-7445 • www.[illegible].com
221 W. Colorado Blvd. • Pavilion II • Suite 730 • Dallas, Texas 75208

From: Jason Simmons, MD

Fax #: (214) 946-7445 **Phone #: (214) 946-9898**

Number of Pages Including Fax Coversheet ________

RE: Signed E-mail

If you have any questions, please call. THANK YOU!!

EXHIBIT E

ACGME retaliation.

On Thu, Apr 29, 2010 at 12:32 PM, Resident Services <residentservices@acgme.org> wrote:

Dear Jason,

We have your complaint, but in order to pursue it we need your signature. Please sign the email and return it to me by email or fax (312-755-5048). If you do not want to sign it, I can treat it as a concern; that means calling the DIO and talking with him/her about it. It would not affect the program's accreditation where as a formal complaint might.

Marsha

MD

Jason L. Simmons, M.D.

5/6/10

Sent 10 AC 6/15
5/6/10
EXHIBIT E

To whom it may concern,

I am a third year resident in the internal medicine program at Dallas Methodist Hospital. I am writing because the current DIO at this hospital needs to be removed in addition to the program director. I say this for several reasons, mainly for failure to respond to several resident complaints of harassment. I myself have been a victim of harassment by the program director for over a year. In the past I have proven my case and had the DIO has agreed with me. Following our agreements he continually fails to force the program director to change her system of harassment. The DIO has been aware of:

-Favoritism in the treatment of residents

-Program Director forcing disfavored residents to complete certain requirements that other residents do not

-"Burn Out" schedules given to residents who complain or do not conform

-Resident being threatened with termination by the program director if director was not allowed to review the resident's personal cell phone messages

-Residents placed on probation for performance on ITE

-Residents placed on probation for attendance. Attendance tracking at program has been proven to be flawed for over one year. DIO has been told on more than one occasion attendance tracking would be changed and still has not

-etc

The DIO has been guilty of:

-Stating matters will be addressed and not following through.

-Not responding to emails with direct questions

-Please see the attached letter that Dr. Rivera did not respond to for over 3 months. I sat for 30 minutes in his office waiting to discuss the letter. He did not show for the scheduled meeting. Only after I gave a copy to the COO of the hospital with a new complaint did he respond.

At present, Dr. Rivera is refusing to announce the results of his "investigation." I have been successful in convincing him of the grand scale of harassment that occurs at this residency program. He has since sat down with individual residents to discuss their personal experience. He assured me that he would compile the accounts, publicly announce a consensus and make recommendations for change. He completed this investigation roughly 3 weeks ago. In that time he has failed to meet with me despite

EXHIBIT E
Retaliation sent to ACGME
5/6/10

stating he would and ignored emails. He is hesitant to "publish" what he has found because of how damaging it is. The level of injustice that has gone on in the program for years is outrageous. I do not understand the reasons why he is protecting the program director. He is well aware that the majority of residents here are unhappy and for legitimate reasons. I even had to force him to change the format of how he carried out his investigation. Originally, he had Dr. Hunter's secretary sit in on the individual meetings as a "scribe." I had to explicitly state how atrocious the idea of having the very program director's secretary record the private interviews about the stated program director before he would change the format. To this day the residents who were interviewed under the original format have not given their full account.

It is hard to organize all the events that have occurred even in the last year. I am asking that the ACGME immediately send an individual or team to investigate this program. I ask that the ACGME force Dr. Rivera to publish the results of his investigation. The "in-house" investigations that occur here are half-hearted at best and produce predictable results. The program needs to be drastically changed. An investigation is occurring this Friday April 16, 2010. It would be a perfect forum for Dr. Rivera to address the residency.

I am not writing as the typical resident who is disgruntled with his residency experience. I have attached my personal CV to show that I have been successful during residency. I am truly concerned about the quality of this program. I am willing to risk what I have accomplished to motivate someone with a true action plan to end the real harassment occurring here.

Sincerely,

Jason L. Simmons, MD

, EXHIBIT F

From: jason simmons [kuriousmonkey@yahoo.com]
Sent: Monday, October 25, 2010 2:52 PM
To: Cristal Cienfuegos
Subject: 3rd set

[redacted]

--- On **Mon, 5/10/10, Rivera-Alsina, Manuel** <*ManuelRivera-Alsina@mhd.com*> wrote:

From: Rivera-Alsina, Manuel <ManuelRivera-Alsina@mhd.com>
Subject: RE: Vacation, Favoritism, etc....
To: "jason simmons" <kuriousmonkey@yahoo.com>
Cc: "Hunter MD, Leigh" <LeighHunter@mhd.com>, "Tedder, Stephen" <StephenTedder@mhc
"Turner, Berta" <BertaTurner@mhd.com>
Date: Monday, May 10, 2010, 12:13 PM

Regarding your vacations, this is an issue between you and the Program. If there is any problems that c
resolved between the parties, or you feel there is any further issue that the DIO/AVPME needs to get inv
I will get involved. Dr. Hunter needs to sit with you and solve the issue, if that does not happen and you
bring the issue to the Executive Committee of GME then please request so. ACGME contacted me rega
issues, not your vacation conflict. The resolution of your vacation issues are within the program first, the
use the established process GME has.

Manuel E. Rivera-Alsina, MD, MBA, FACOG, FACPE

AVPME/DIO

From: jason simmons [mailto:kuriousmonkey@yahoo.com]
Sent: Monday, May 10, 2010 10:57 AM
To: Rivera-Alsina, Manuel
Subject: RE: Vacation, Favoritism, etc....

Dr. Rivera,

I have contacted ACGME regarding your handling of the situation here. Hopefully they will be
soon. I am still waiting to resolve my vacation issue. Whenever you are ready please let me kno
inform Dr. Hunter/Modak that this process is being held up by yourself.

-Jason

EXHIBIT 6

ACGME Institutional Requirements

I. Structure for Educational Oversight

I.A. Sponsoring Institution

I.A.1. Residency and fellowship programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) must function under the ultimate authority and oversight of one Sponsoring Institution. Oversight of resident/ fellow assignments and of the quality of the learning and working environment by the Sponsoring Institution extends to all participating sites. (Core)*

I.A.2. The Sponsoring Institution must be in substantial compliance with the ACGME Institutional Requirements and must ensure that its ACGME-accredited programs are in substantial compliance with the ACGME Institutional, Common, and specialty/subspecialty-specific Program Requirements, as well as ACGME Policies and Procedures. (Outcome)

I.A.3. The Sponsoring Institution must maintain its ACGME institutional accreditation. Failure to do so will result in loss of accreditation for its ACGME-accredited programs. (Outcome)

I.A.4. The Sponsoring Institution and its ACGME-accredited programs must only assign residents/fellows to learning and working environments that facilitate patient safety and health care quality. (Outcome)

I.A.5. The Sponsoring Institution must identify a:

I.A.5.a) Designated Institutional Official (DIO): The individual who, in collaboration with a Graduate Medical Education Committee (GMEC), must have authority and responsibility for the oversight and administration of the Sponsoring Institution's ACGME-accredited programs, as well as responsibility for ensuring compliance with the ACGME Institutional, Common, and specialty/subspecialty-specific Program Requirements; and, (Core)

I.A.5.b) Governing Body: The entity which maintains authority over the Sponsoring Institution and its ACGME-accredited programs. (Core)

I.A.6. A written statement must document the Sponsoring Institution's commitment to GME by providing the necessary financial support for administrative, educational, and clinical resources, including personnel, and which must be reviewed, dated, and signed at least once every five years by the DIO, a representative of the Sponsoring Institution's senior administration, and a representative of the Governing Body. (Core)

I.A.7. Any Sponsoring Institution or its major participating site that is a hospital must maintain accreditation to provide patient care. (Core)

I.A.7.a) Accreditation for patient care must be provided by:

I.A.7.a).(1) the Joint Commission; or, (Core)

I.A.7.a).(2) an entity granted "deeming authority" for participation in Medicare under federal regulations; or, (Core)

I.A.7.a).(3) an entity certified as complying with the conditions of participation in Medicare under federal regulations. (Core)

I.A.8. When a Sponsoring Institution or major participating site that is a hospital loses its accreditation, the Sponsoring Institution must notify and provide a plan of response to the Institutional Review Committee (IRC) within 30 days of such loss. Based on the particular circumstances, the IRC may request the ACGME invoke its "Procedure for Alleged Egregious or Catastrophic Events" policy. (Core)

I.B. GMEC

I.B.1. Membership: The Sponsoring Institution must have a GMEC that includes at least the following voting members: (Core)

I.B.1.a) the DIO; (Core)

I.B.1.b) a representative sample of program directors from its ACGME-accredited programs; (Core)

I.B.1.c) a minimum of two peer-selected residents/fellows; and, (Core)

I.B.1.d) a quality improvement/safety officer or his or her designee. (Core)

I.B.2. Additional GMEC members and subcommittees: In order to carry out portions of the GMEC's responsibilities, additional GMEC membership may include others as determined by the GMEC. (Detail)

I.B.2.a) Subcommittees that address required GMEC responsibilities must include a peer-selected resident/fellow. (Detail)

I.B.2.b) Subcommittee actions that address required GMEC responsibilities must be reviewed and approved by the GMEC. (Detail)

I.B.3. Meetings and Attendance: The GMEC must meet a minimum of once every quarter during each academic year. (Core)

I.B.3.a) Each meeting of the GMEC must include attendance by at least one resident/fellow member. (Core)

I.B.3.b) The GMEC must maintain meeting minutes that document execution of all required GMEC functions and responsibilities. (Core)

I.B.4. Responsibilities: GMEC responsibilities must include:

I.B.4.a)	Oversight of:
I.B.4.a).(1)	the ACGME accreditation status of the Sponsoring Institution and its ACGME-accredited programs; (Outcome)
I.B.4.a).(2)	the quality of the GME learning and working environment within the Sponsoring Institution, its ACGME-accredited programs, and its participating sites; (Outcome)
I.B.4.a).(3)	the quality of educational experiences in each ACGME-accredited program that lead to measurable achievement of educational outcomes as identified in the ACGME Common and specialty/subspecialty-specific Program Requirements; (Outcome)
I.B.4.a).(4)	the ACGME-accredited programs' annual evaluation and improvement activities; and, (Core)
I.B.4.a).(5)	all processes related to reductions and closures of individual ACGME-accredited programs, major participating sites, and the Sponsoring Institution. (Core)
I.B.4.b)	review and approval of:
I.B.4.b).(1)	institutional GME policies and procedures; (Core)
I.B.4.b).(2)	annual recommendations to the Sponsoring Institution's administration regarding resident/fellow stipends and benefits; (Core)
I.B.4.b).(3)	applications for ACGME accreditation of new programs; (Core)
I.B.4.b).(4)	requests for permanent changes in resident/fellow complement; (Core)
I.B.4.b).(5)	major changes in ACGME-accredited programs' structure or duration of education; (Core)
I.B.4.b).(6)	additions and deletions of ACGME-accredited programs' participating sites; (Core)
I.B.4.b).(7)	appointment of new program directors; (Core)
I.B.4.b).(8)	progress reports requested by a Review Committee; (Core)
I.B.4.b).(9)	responses to Clinical Learning Environment Review (CLER) reports; (Core)
I.B.4.b).(10)	requests for exceptions to duty hour requirements; (Core)

I.B.4.b).(11) voluntary withdrawal of ACGME program accreditation; (Core)

I.B.4.b).(12) requests for appeal of an adverse action by a Review Committee; and, (Core)

I.B.4.b).(13) appeal presentations to an ACGME Appeals Panel. (Core)

I.B.5. The GMEC must demonstrate effective oversight of the Sponsoring Institution's accreditation through an Annual Institutional Review (AIR). (Outcome)

I.B.5.a) The GMEC must identify institutional performance indicators for the AIR which include: (Core)

I.B.5.a).(1) results of the most recent institutional self-study visit; (Detail)

I.B.5.a).(2) results of ACGME surveys of residents/fellows and core faculty; and, (Detail)

I.B.5.a).(3) notification of ACGME-accredited programs' accreditation statuses and self-study visits. (Detail)

I.B.5.b) The AIR must include monitoring procedures for action plans resulting from the review. (Core)

I.B.5.c) The DIO must submit a written annual executive summary of the AIR to the Governing Body. (Core)

I.B.6. The GMEC must demonstrate effective oversight of underperforming programs through a Special Review process. (Core)

I.B.6.a) The Special Review process must include a protocol that: (Core)

I.B.6.a).(1) establishes criteria for identifying underperformance; and, (Core)

I.B.6.a).(2) results in a report that describes the quality improvement goals, the corrective actions, and the process for GMEC monitoring of outcomes. (Core)

II. Institutional Resources

II.A. Institutional GME Infrastructure and Operations: The Sponsoring Institution must ensure that:

II.A.1. the DIO has sufficient financial support and protected time to effectively carry out his or her educational, administrative, and leadership responsibilities; (Core)

II.A.2. the DIO engages in professional development applicable to his or her responsibilities as an educational leader; and, (Core)

II.A.3. sufficient salary support and resources are provided for effective administration of the GME Office. (Core)

II.B. Program Administration: The Sponsoring Institution, in collaboration with each ACGME-accredited program, must ensure that:

II.B.1. program directors have sufficient financial support and protected time to effectively carry out their educational, administrative, and leadership responsibilities as described in the Institutional, Common, and specialty/subspecialty-specific Program Requirements; (Core)

II.B.2. programs receive adequate support for core faculty members to ensure both effective supervision and quality resident/fellow education; (Core)

II.B.3. program directors and core faculty members engage in professional development applicable to their responsibilities as educational leaders; (Core)

II.B.4. program coordinators have sufficient support and time to effectively carry out their responsibilities; and, (Core)

II.B.5. resources, including space, technology, and supplies, are available to provide effective support for ACGME-accredited programs. (Core)

II.C. Resident/Fellow Forum: The Sponsoring Institution must ensure availability of an organization, council, town hall, or other platform that allows residents/fellows from across the Sponsoring Institution's ACGME-accredited programs to communicate and exchange information with each other relevant to their ACGME-accredited programs and their learning and working environment. (Core)

II.C.1. Any resident/fellow from one of the Sponsoring Institution's ACGME-accredited programs must have the opportunity to raise a concern to the forum. (Core)

II.C.2. Residents/fellows must have the option, at least in part, to conduct their forum without the DIO, faculty members, or other administrators present. (Core)

II.D. Resident Salary and Benefits: The Sponsoring Institution, in collaboration with each of its ACGME-accredited programs and its participating sites, must provide all residents/fellows with financial support and benefits to ensure that they are able to fulfill the responsibilities of their ACGME-accredited programs. (Core)

II.E. Educational Tools

II.E.1. Communication resources and technology: Faculty members and residents/fellows must have ready access to adequate communication resources and technological support. (Core)

II.E.2. Access to medical literature: Faculty members and residents/fellows must have ready access to specialty/subspecialty-specific electronic medical literature databases and other current reference material in print or electronic format. (Core)

II.F. Support Services and Systems

II.F.1. The Sponsoring Institution must provide support services and develop health care delivery systems to minimize residents'/fellows' work that is extraneous to their ACGME-accredited programs' educational goals and objectives, and to ensure that residents'/fellows' educational experience is not compromised by excessive reliance on residents/fellows to fulfill non-physician service obligations. These support services and systems must include: (Core)

II.F.1.a) Peripheral intravenous access placement, phlebotomy, laboratory, pathology and radiology services and patient transportation services provided in a manner appropriate to and consistent with educational objectives and to support high quality and safe patient care; and, (Core)

II.F.1.b) Medical records available at all participating sites to support high quality and safe patient care, residents'/fellows' education, quality improvement and scholarly activities. (Core)

II.F.2. The Sponsoring Institution must ensure a healthy and safe learning and working environment that provides for:

II.F.2.a) Access to food while on duty at all participating sites; (Core)

II.F.2.b) Safe, quiet, and private sleep/rest facilities available and accessible for residents/fellows to support education and safe patient care; and, (Core)

II.F.2.c) Security and safety measures appropriate to the participating site. (Core)

III. Resident/Fellow Learning and Working Environment

III.A. The Sponsoring Institution and its ACGME-accredited programs must provide a learning and working environment in which residents/fellows have the opportunity to raise concerns and provide feedback without intimidation or retaliation and in a confidential manner as appropriate. (Core)

III.B. The Sponsoring Institution is responsible for oversight and documentation of resident/fellow engagement in: (Core)

III.B.1. Patient safety: The Sponsoring Institution must ensure that residents/fellows have:

III.B.1.a) access to systems for reporting errors, adverse events, unsafe conditions, and near misses in a protected manner that is free from reprisal; and, (Core)

III.B.1.b) opportunities to contribute to root cause analysis or other similar risk-reduction processes. (Core)

III.B.2. Quality improvement: The Sponsoring Institution must ensure that residents/fellows have:

III.B.2.a) access to data to improve systems of care, reduce health care disparities, and improve patient outcomes; and, (Core)

III.B.2.b) opportunities to participate in quality improvement initiatives. (Core)

III.B.3. Transitions of care: The Sponsoring Institution must:

III.B.3.a) facilitate professional development for core faculty members and residents/fellows regarding effective transitions of care; and, (Core)

III.B.3.b) ensure that participating sites engage residents/fellows in standardized transitions of care consistent with the setting and type of patient care. (Core)

III.B.4. Supervision: The Sponsoring Institution must oversee:

III.B.4.a) supervision of residents/fellows consistent with institutional and program-specific policies; and, (Core)

III.B.4.b) mechanisms by which residents/fellows can report inadequate supervision in a protected manner that is free from reprisal. (Core)

III.B.5. Duty hours, fatigue management, and mitigation: The Sponsoring Institution must oversee:

III.B.5.a) resident/fellow duty hours consistent with the Common and specialty/subspecialty-specific Program Requirements across all programs, addressing areas of non-compliance in a timely manner; (Core)

III.B.5.b) systems of care and learning and working environments that facilitate fatigue management and mitigation for residents/fellows; and, (Core)

III.B.5.c) an educational program for residents/fellows and core faculty members in fatigue management and mitigation. (Core)

III.B.6. Professionalism: The Sponsoring Institution must provide systems for education in and monitoring of:

III.B.6.a) residents'/fellows' and core faculty members' fulfillment of

educational and professional responsibilities, including scholarly pursuits; (Core)

III.B.6.b) accurate completion of required documentation by residents/fellows; and, (Core)

III.B.6.c) identification of resident/fellow mistreatment. (Core)

IV. Institutional GME Policies and Procedures

IV.A. Resident/Fellow Recruitment

IV.A.1. Eligibility and Selection of Residents/Fellows: The Sponsoring Institution must have written policies and procedures for resident/fellow recruitment and appointment, and must monitor each of its ACGME-accredited programs for compliance. (Core)

IV.A.2. An applicant must meet one of the following qualifications to be eligible for appointment to an ACGME-accredited program: (Core)

IV.A.2.a) graduation from a medical school in the United States or Canada, accredited by the Liaison Committee on Medical Education (LCME); or, (Core)

IV.A.2.b) graduation from a college of osteopathic medicine in the United States, accredited by the American Osteopathic Association (AOA); or, (Core)

IV.A.2.c) graduation from a medical school outside of the United States or Canada, and meeting one of the following additional qualifications: (Core)

IV.A.2.c).(1) holds a currently-valid certificate from the Educational Commission for Foreign Medical Graduates prior to appointment; or, (Core)

IV.A.2.c).(2) holds a full and unrestricted license to practice medicine in a United States licensing jurisdiction in his or her current ACGME specialty/subspecialty program; or, (Core)

IV.A.2.c).(3) has graduated from a medical school outside the United States and has completed a Fifth Pathway** program provided by an LCME-accredited medical school. (Core)

IV.A.3. An applicant invited to interview for a resident/fellow position must be informed, in writing or by electronic means, of the terms, conditions, and benefits of appointment to the ACGME-accredited program, either in effect at the time of the interview or that will be in effect at the time of his or her eventual appointment. (Core)

IV.A.3.a) Information that is provided must include: financial support;

vacations; parental, sick, and other leaves of absence; and professional liability, hospitalization, health, disability and other insurance accessible to residents/fellows and their eligible dependents. (Core)

IV.B. Agreement of Appointment/Contract

IV.B.1. The Sponsoring Institution must ensure that residents/fellows are provided with a written agreement of appointment/contract outlining the terms and conditions of their appointment to a program. The Sponsoring Institution must monitor programs with regard to implementation of terms and conditions of appointment. (Core)

IV.B.2. The contract/agreement of appointment must directly contain or provide a reference to the following items: (Core)

IV.B.2.a) resident/fellow responsibilities; (Core)

IV.B.2.b) duration of appointment; (Core)

IV.B.2.c) financial support for residents/fellows; (Core)

IV.B.2.d) conditions for reappointment and promotion to a subsequent PGY level; (Core)

IV.B.2.e) grievance and due process; (Core)

IV.B.2.f) professional liability insurance, including a summary of pertinent information regarding coverage; (Core)

IV.B.2.g) hospital and health insurance benefits for residents/fellows and their eligible dependents; (Core)

IV.B.2.h) disability insurance for residents/fellows; (Core)

IV.B.2.i) vacation, parental, sick, and other leave(s) for residents/fellows, compliant with applicable laws; (Core)

IV.B.2.j) timely notice of the effect of leave(s) on the ability of residents/fellows to satisfy requirements for program completion; (Core)

IV.B.2.k) information related to eligibility for specialty board examinations; and, (Core)

IV.B.2.l) institutional policies and procedures regarding resident/fellow duty hours and moonlighting. (Core)

IV.C. Promotion, Appointment Renewal and Dismissal

IV.C.1. The Sponsoring Institution must have a policy that requires each of its

ACGME-accredited programs to determine the criteria for promotion and/or renewal of a resident's/fellow's appointment. (Core)

IV.C.1.a) The Sponsoring Institution must ensure that its programs provide a resident/fellow with a written notice of intent when that resident's/fellow's agreement will not be renewed, when that resident/fellow will not be promoted to the next level of training, or when that resident/fellow will be dismissed. (Core)

IV.C.1.b) The Sponsoring Institution must have a policy that provides residents/fellows with due process relating to the following actions regardless of when the action is taken during the appointment period: suspension, non-renewal, non-promotion; or dismissal. (Core)

IV.D. Grievances: The Sponsoring Institution must have a policy that outlines the procedures for submitting and processing resident/fellow grievances at the program and institutional level and that minimizes conflicts of interest. (Core)

IV.E. Professional Liability Insurance

IV.E.1. The Sponsoring Institution must provide residents/fellows with professional liability coverage, including legal defense and protection against awards from claims reported or filed during participation in ACGME-accredited programs, or after completion of the program(s) if the alleged acts or omissions of a resident/fellow are within the scope of the program(s). (Core)

IV.E.2. The Sponsoring Institution must provide official documentation of the details of liability coverage upon request of the individual. (Core)

IV.F. Health and Disability Insurance

IV.F.1. The Sponsoring Institution must provide health insurance benefits for residents/fellows and their eligible dependents beginning on the first day of insurance eligibility. (Core)

IV.F.1.a) If the first day of health insurance eligibility is not the first day that residents/fellows are required to report, then the residents/fellows must be given advanced access to information regarding interim coverage so that they can purchase coverage if desired. (Core)

IV.F.2. The Sponsoring Institution must provide disability insurance benefits for residents/fellows beginning on the first day of disability insurance eligibility. (Core)

IV.F.2.a) If the first day of disability insurance eligibility is not the first day that residents/fellows are required to report, then the residents/fellows must be given advanced access to information regarding interim coverage so that they can purchase coverage if desired. (Core)

IV.G. Vacation and Leaves of Absence

IV.G.1. The Sponsoring Institution must have a policy for vacation and other leaves of absence, consistent with applicable laws. (Core)

IV.G.2. This policy must ensure that each ACGME-accredited program provides its residents/fellows with accurate information regarding the impact of an extended leave of absence upon the criteria for satisfactory completion of the program and upon a resident's/fellow's eligibility to participate in examinations by the relevant certifying board(s). (Core)

IV.H. Resident Services

IV.H.1. Behavioral health: The Sponsoring Institution must provide residents/fellows with access to confidential counseling and behavioral health services. (Core)

IV.H.2. Physician impairment: The Sponsoring Institution must have a policy, not necessarily GME-specific, that addresses physician impairment. (Core)

IV.H.3. Harassment: The Sponsoring Institution must have a policy, not necessarily GME-specific, covering sexual and other forms of harassment, that allows residents/fellows access to processes to raise and resolve complaints in a safe and non-punitive environment consistent with applicable laws and regulations. (Core)

IV.H.4. Accommodation for disabilities: The Sponsoring Institution must have a policy, not necessarily GME-specific, regarding accommodations for disabilities consistent with all applicable laws and regulations. (Core)

IV.I. Supervision

IV.I.1. The Sponsoring Institution must maintain an institutional policy regarding supervision of residents/fellows. (Core)

IV.I.2. The Sponsoring Institution must ensure that each of its ACGME-accredited programs establishes a written program-specific supervision policy consistent with the institutional policy and the respective ACGME Common and specialty/subspecialty-specific Program Requirements. (Core)

IV.J. Duty Hours: The Sponsoring Institution must maintain a duty hour policy that ensures effective oversight of institutional and program-level compliance with ACGME duty hour standards. (Core)

IV.J.1. Moonlighting: The Sponsoring Institution must maintain a policy on moonlighting that includes the following:

IV.J.1.a) residents/fellows must not be required to engage in moonlighting; (Core)

IV.J.1.b) residents/fellows must have written permission from their program director to moonlight; (Core)

IV.J.1.c) an ACGME-accredited program will monitor the effect of moonlighting activities on a resident's/fellow's performance in the program, including that adverse effects may lead to withdrawal of permission to moonlight; and, (Core)

IV.J.1.d) the Sponsoring Institution or individual ACGME-accredited programs may prohibit moonlighting by residents/fellows. (Core)

IV.K. Vendors: The Sponsoring Institution must maintain a policy that addresses interactions between vendor representatives/corporations and residents/fellows and ACGME-accredited programs. (Core)

IV.L. Non-competition: The Sponsoring Institution must maintain a policy which states that neither the Sponsoring Institution nor any of its ACGME-accredited programs will require a resident/fellow to sign a non-competition guarantee or restrictive covenant. (Core)

IV.M. Disasters: The Sponsoring Institution must maintain a policy consistent with ACGME Policies and Procedures that addresses administrative support for ACGME-accredited programs and residents/fellows in the event of a disaster or interruption in patient care. (Core)

IV.M.1. This policy should include information about assistance for continuation of salary, benefits, and resident/fellow assignments. (Core)

IV.N. Closures and Reductions: The Sponsoring Institution must maintain a policy that addresses GMEC oversight of reductions in size or closure of ACGME-accredited programs, or closure of the Sponsoring Institution that includes the following: (Core)

IV.N.1. the Sponsoring Institution must inform the GMEC, DIO, and affected residents/fellows as soon as possible when it intends to reduce the size of or close one or more ACGME-accredited programs, or when the Sponsoring Institution intends to close; and, (Core)

IV.N.2. the Sponsoring Institution must allow residents/fellows already in an affected ACGME-accredited program(s) to complete their education at the Sponsoring Institution, or assist them in enrolling in (an)other ACGME-accredited program(s) in which they can continue their education. (Core)

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*__Core Requirements:__ Statements that define structure, resource, or process elements essential to every graduate medical educational program.
__Detail Requirements:__ Statements that describe a specific structure, resource, or process, for achieving compliance with a Core Requirement. Programs in substantial compliance with the Outcome Requirements may utilize alternative or innovative approaches to meet Core Requirements.

Outcome Requirements: Statements that specify expected measurable or observable attributes (knowledge, abilities, skills, or attitudes) of residents or fellows at key stages of their graduate medical education.

**Footnote for IV.A.2.c).(3): A Fifth Pathway program is an academic year of supervised clinical education provided by an LCME-accredited medical school to students who meet the following conditions: (1) have completed, in an accredited college or university in the United States, undergraduate premedical education of the quality acceptable for matriculation in an accredited United States medical school; (2) have studied at a medical school outside the United States and Canada but listed in the World Health Organization Directory of Medical Schools; (3) have completed all of the formal requirements of the foreign medical school except internship and/or social service; (4) have attained a score satisfactory to the sponsoring medical school on a screening examination; and (5) have passed either the Foreign Medical Graduate Examination in the Medical Sciences, Parts I and II of the examination of the National Board of Medical Examiners, or Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).

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